IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 22510 of 2004

Between:

1. Rajiv Gandhi Nagar Colony Nirvasitula Sankshema Sangham,

Regd. No.2666/04, rep.by its President M.Hanumayya
C/o.H.No.150/1, Rajiv Gandhi Nagar Colony,
Bachipally, Qutubullapur Mandal, R.R.District.
2. M. Hanumayya, S/o.Ilayya,
C/o.H.No.150/1, Rajiv Gandhi Nagar Colony,
Bachipally, Qutubullapur Mandal, R.R.Dist.
3. M.V.V. Satyanarayana, S/o.Late Veerraghavulu,
H.No.37/17, Rajiv Gandhi Nagar Colony,
Bachipally, Qutubullapur Mandal, R.R.District.

..... PETITIONERS

AND

1. Govt. of A.P., rep.by its Secretary, Revenue Secretariat,

Secretariat Buildings, Hyderabad.
2. District Collector, Ranga Reddy Dist., Lakadikapool, Hyderabad.
3. Joint Collector, Ranga Reddy Dist., Lakadikapool, Hyderabad.
4. The Revenue Divisional officer, Qutubullapur Mandal,

Qutubullapur, Ranga Reddy Dist.
5. Mandal Revenue officer, Qutubullapur Mandal, Qutubullapur,

Ranga Reddy Dist.
6. Commissioner of police, Cyberabad, Lakadikapool, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a *Writ of Mandamus*, or any other appropriate writ, order or direction, declaring the action of the respondents, demolition of houses constructed by the members of the 1st petitioner Sangham, with their hard earnings is highly illegal arbitrary and against the principles of natural justice and against the rights guaranteed under fundamental rights of Constitution of India, and further directing the respondents to issue pattas in favour of the members of the 1st petitioner Sangham and construct the houses and put the members of the 1st petitioner Sangham in occupation, and pass such other order or orders.

Counsel for the Petitioner: MR.E.S.R.PRASAD

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

ORAL ORDER:

Heard both sides.

2. The petitioners filed this writ petition, seeking declaration of the action of the respondents in demolishing the houses constructed by the members of the first petitioner Sangham, as arbitrary and illegal.

3. It is the contention of the petitioner Sangam that they have been in possession and enjoyment of the subject land, which is in dispute since several years by erecting huts. Be that as it may, the respondents have resorted to demolish all the huts by invoking Section 7-A of the A.P. Land Encroachment Act, 1905 on the ground that the land belongs to the Government.

4. It is contended by the learned Government Pleader that in fact the subject land belongs to the Government and the said land was declared as surplus under the provisions of A.P. Ceiling on Agricultural Holdings Act, 1973 and are vested with the Government. Whenever the Revenue authorities have noticed the said illegal group encroachments, they have been removing the

encroachments from time to time to protect the Government land. It is further stated that the Government has also constructed houses under Weaker Section House programme and the assignees have been living therein. The assignees have named their colony as Rajiv Gandhi Nagar Weaker Section Colony.

5. It is further stated in the counter-affidavit that the Mandal Revenue Officer, Quthbullapur has in fact earlier removed 200 group encroachments in the month of April 2003, 175 group encroachments in October, 2003 and 45 groups in May, 2004. From the above, it is clear that the activity of group encroachments and removal of the same has been a continuous and regular phenomenon.

6. Accordingly, in view of the group encroachments from time to time, Section 7-A of the A.P. Land Encroachment Act, 1905 had been invoked in order to protect the interest of the Government and all the encroachments were removed. It appears from the counter-affidavit that the list of memberships of the first petitioner Sangam as per the annexure is verified and found that about 56 persons whose names are shown in Annexure-1 have put up temporary unfinished constructions, which were of recent origin only to make false claims for regularization and they were removed on 27.10.2004. The other particulars, which have been mentioned in the counter affidavit, need not necessarily be referred to.

7. In view of the said rival contentions, firstly, it is to be seen that the members of the petitioner Sangam have been encroached the Government land and it is settled principle that any encroacher can be evicted in due process of law if not objected to initially. But, a trespasser has no such protection.

8. But in the instant case, it is to be seen that the members of the petitioner Sangam have been resorting to this encroachment from time to time with regular intervals and on the basis of the reports of the revenue officials and other trespasser officers, the encroachments are being removed. Eventually, the Section 7 (a) had been resorted to and all the encroachments were removed. In fact how in many areas the members of the petitioner Sangam

have encroached in reality, is not established.

9. In this context, the learned counsel for the petitioner submits that there is voluminous documents like voters list, ration card etc., which discloses that the members of the petitioner Sangam have been residing in that locality as encroachers. At the out set, this submission cannot be acceded to for the reason that the entries made in such records cannot be treated as relevant and conclusive documentary evidence in order to show that they have been in continuous possession and enjoyment of the disputed property, and on the other hand the same have to be established independently.

10. It is well settled principle that an encroacher of a Government land cannot have a vested right to have the land assigned to him. At best, an encroacher can have right of having consideration by the competent authority to have the possession or assignment of the land subject to eligibility.

11. In the instant case, as already noticed that the encroachments in the subject land have been going on by groups of people who cannot be identified, by raising huts from time to time. In other words, this type of encroachment can otherwise be termed as organized encroachment contrary to the interest of the Government and also to the eligibility of others who are the people below the poverty line.

12. It is further brought to the notice of this Court by the learned Government Pleader for Revenue that under a group housing scheme by name and style as Rajiv Gandhi colony, by raising funds from different sources, constructions of tenements on the basis of 1 + 3 would be taken up and after completion of the construction they are going to be allotted or assigned to the persons who are landless people after a comprehensive identification of such eligible persons.

13. Now, the story of encroachments had come to an end and the rights of the members of the petitioner Sangam were also decided against them inasmuch

as there is no proper identification even as regards as their identity and existence. Further, as already been pointed out and at the cost of the reputation the voluminous record which show the names of the encroachers who are allegedly members of the petitioner's association cannot be a ground for declaring them as encroachers having rights of an encroacher for the purpose of eviction.

14. An encroacher of the Government land in a broader sense can be a person who has an express or implied licence to hold that property. But in the present case, the encroachers were never accorded any such permission in any manner whatsoever to continue in possession of the subject land.

15. As already been noticed, by virtue of the scheme evolved by the Government certain constructions on permanent basis are being raised and several beneficiaries would be identified and be given possession to them. In such a case, the members of the petitioner Sangam also notwithstanding there being a possession of the society are always at liberty to make a representation/application to the M.R.O. seeking allotment of a permanent source constructed under the above said scheme and after such an application being made, the respondents would allot the tenements to such of those applicants who are eligible, subject to availability, identification and also subject to the terms and conditions.

16. It is further brought to the notice of this Court by the learned Government Pleader, upon instructions, that initially the members of the petitioner Sangam need not pay any deposit along with an application, which is actually required by other people as per the scheme. However, they have to make the deposit and comply with the other formalities as soon as they get information from the authorities about the eligibility.

17. Accordingly, the writ petition is disposed of. However, there shall be no order as to costs.

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(D.S.R. VARMA, J)

Date: 30.03.2005

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SECTION OFFICER

To

1.The Secretary, Govt. of Andhra Pradesh, Revenue, Secretariat, Secretariat Buildings, Hyderabad.
2.District Collector, Ranga Reddy Dist., Lakadikapool, Hyderabad.
3.Joint Collector, Ranga Reddy Dist., Lakadikapool, Hyderabad.
4.The Revenue Divisional officer, Qutubullapur Mandal, Qutubullapur, Ranga Reddy Dist.
5.Mandal Revenue officer, Qutubullapur Mandal, Qutubullapur,

Ranga Reddy Dist.
6.Commissioner of police, Cyberabad, Lakadikapool, Hyderabad.

7. 2 CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

8. 2 CD copies

9. 1 CC to MR.PRASAD

*Form-NIC-OGS/WP{**JA**}*